

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROBERT CRAWFORD</b>	)	
Claimant	)	
	)	
VS.	)	
	)	Docket Nos. 157,443
<b>WOLF CREEK NUCLEAR OPERATING CORP.</b>	)	195,627
Self-Insured Respondent	)	195,628
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The self-insured respondent requests review of an Order Extending Terminal Dates entered by Administrative Law Judge Brad E. Avery on November 20, 2002.

**ISSUES**

The Administrative Law Judge (ALJ), on his own motion, entered an Order Extending Terminal Dates dated November 20, 2002, which extended all the parties terminal dates to December 20, 2002, for the purpose of allowing time for Dr. Peter Bieri to answer additional questions the ALJ had addressed to the doctor in a letter dated November 19, 2002.

The sole issue raised on review by the respondent is whether the Administrative Law Judge exceeded his authority by unilaterally issuing an Order for Extension of Terminal Dates after the terminal dates for submission of evidence had expired. Respondent requests the ALJ's Order Extending Terminal Dates be reversed and the case submitted on the record.

The claimant argues the ALJ has the authority to request an independent medical examination and further has the authority to reopen the case and extend terminal dates for good cause. Claimant concludes the request for clarification of the initial report from the court ordered independent medical examiner, Dr. Bieri, established good cause for extension of the terminal dates.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The facts are essentially undisputed. During the trial of these consolidated cases, the ALJ appointed Dr. Bieri to perform an independent medical examination of the claimant. Dr. Bieri issued his report and was later deposed on October 29, 2002. The terminal dates for all the parties to submit evidence expired on October 31, 2002.

On November 19, 2002, the ALJ sent a letter to Dr. Bieri which noted the ALJ was in receipt of the doctor's prior report and deposition. The letter posed additional questions to the doctor regarding whether claimant had suffered any permanent impairment as a result of several different incidents. The letter to the doctor was copied to the parties.

On November 20, 2002, the ALJ unilaterally entered an Order Extending Terminal Dates. The terminal dates for all the parties were extended to December 20, 2002, "for the purpose of allowing Dr. Bieri to answer the questions posed by the court."

Respondent argues the ALJ is required to issue a decision within 30 days after the parties have submitted a case for an award. Respondent notes that instead of issuing the award the ALJ exceeded his jurisdiction by extending the terminal dates absent a request for such an extension by the parties. Lastly, respondent argues extending the terminal dates denies respondent's due process rights. Respondent argues that it may be necessary to again depose the doctor and it would be impossible to schedule the deposition within the new terminal dates.

The principal question presented by this proceeding is whether the ALJ could reopen the record, request additional information from the court ordered independent medical examiner and extend the terminal dates after the parties had submitted the case for decision. However, the initial issue that the Board must address in this case is whether the Board has jurisdiction to review the ALJ's Order Extending Terminal Dates. After reviewing the briefs of the parties, the Board finds and concludes that it does not have jurisdiction to review this particular matter at this juncture of the proceedings.

The ALJ's decision to extend terminal dates and request additional information from the court ordered independent medical examiner is interlocutory in nature and made during the litigation of a workers compensation case that is before the ALJ. This is neither a final order that can be reviewed pursuant to K.S.A. 44-551 nor an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing of medical treatment and payment of temporary total disability compensation. The Order Extending Terminal Dates now before the Board pertains to an

interlocutory matter, over which an ALJ, pursuant to K.S.A. 44-523(c) has authority to order during the litigation of a workers compensation case.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the application for review filed by the respondent is dismissed. The Administrative Law Judge Brad E. Avery's Order Extending Terminal Dates on November 20, 2002, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January 2003.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: John J. Bryan, Attorney for Claimant  
John D. Jurcyk, Attorney for Respondent  
Robert L. Kennedy, Attorney for Fund  
Brad E. Avery, Administrative Law Judge  
Director, Division of Workers Compensation